

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)
)
)
PHUNG VO HA, M.D.) **Case No. 02-2010-211688**
)
Physician's and Surgeon's)
Certificate No. A 41020)
)
Respondent.)
_____)

DECISION

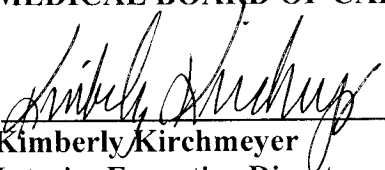
The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 7, 2013.

IT IS SO ORDERED October 31, 2013.

MEDICAL BOARD OF CALIFORNIA

By:


Kimberly Kirchmeyer
Interim Executive Director

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 JOSHUA M. TEMPLET
Deputy Attorney General
4 State Bar No. 267098
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **PHUNG VO HA, M.D.**
14 30 Los Gatos Circle
Sacramento, CA 95831

15 Physician and Surgeon Certificate No.
A 41020

16 Respondent.

Case No. 02-2010-211688

OAH No. 2013020645

17 **STIPULATION FOR SURRENDER**
18 **OF CERTIFICATE**

19 In the interest of a prompt and speedy resolution of this matter, consistent with the public
20 interest and the responsibility of the Medical Board of California, Department of Consumer
21 Affairs, (the "Board"), the parties agree to the following Stipulation for Surrender of Certificate,
22 which will be submitted to the Board for its approval and adoption as the final disposition of Case
23 No. 02-2010-211688.

24 **PARTIES**

25 1. Complainant Kimberly Kirchmeyer brought this action solely in her official
26 capacity as the Interim Executive Director of the Medical Board of California, Department of
27 Consumer Affairs. She is represented in this matter by Kamala D. Harris, Attorney General of
28 the State of California, through Joshua M. Temple, Deputy Attorney General.

2. Respondent Phung Vo Ha, M.D., is represented in this matter by Timothy J.
Aspinwall, Nossaman LLP, 621 Capitol Mall, 25th Floor, Sacramento, CA 95814.

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1 decision. Respondent hereby waives any time-based defense she might otherwise raise to the
2 charges contained in the Accusation, including but not limited to the equitable defense of laches.

3 3. Respondent agrees that a facsimile copy of this agreement shall have the same
4 legal force and effect as the original.

5 4. Respondent understands that by signing this Stipulation, she is enabling the Board
6 to issue its order accepting the surrender of her license without further process. She further
7 understands that upon acceptance of this Stipulation by the Board, she will no longer be permitted
8 to practice as a physician and surgeon in California.

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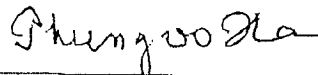
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ACCEPTANCE

I, Phung Vo Ha, M.D., have carefully read the above Stipulation and have discussed its contents with my attorney. I enter into it freely, voluntarily, and with full knowledge of its force and effect, and do hereby agree to surrender my Physician and Surgeon Certificate No. A 41020 to the Medical Board of California for its formal acceptance. By signing this Stipulation to surrender my license, I recognize that as of the effective date of its formal acceptance by the Board, I will lose all rights and privileges to practice as a physician and surgeon in the State of California. Further, if I have not already done so, I will cause to be delivered to the Board my license and wallet certificates on or before the effective date of the decision.

Dated: 10-21-2013



PHUNG VO HA, M.D.
Respondent

I have read and fully discussed with Respondent the terms and conditions and other matters contained in the above Stipulation for Surrender of Certificate. I approve its form and content.

Dated: 10/21/13



TIMOTHY J. ASPINWALL, ESQ.
NOSSAMAN LLP
Attorneys for Respondent

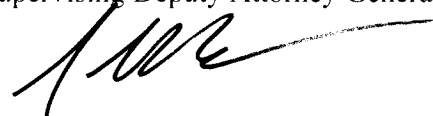
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ENDORSEMENT

This Stipulation for Surrender of Certificate is respectfully submitted for consideration by
the Medical Board of California.

Dated: 10/22/2013

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General



JOSHUA M. TEMPLET
Deputy Attorney General
Attorneys for Complainant

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Exhibit A – Accusation No. 02-2010-211688

1 KAMALA D. HARRIS
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2 GAIL M. HEPPELL
Supervising Deputy Attorney General
3 MIA PEREZ-CASTILLE
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO January 15, 2013
BY: J. K. [Signature] ANALYST

8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 02-2010-211688

12 PHUNG VO HA, M.D.
30 Los Gatos Circle
13 Sacramento, CA 95831

ACCUSATION

14 Physician's and Surgeon's Certificate No. A
15 41020

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

20 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Director of the Medical Board of California.

22 2. On or about July 2, 1984, the Medical Board of California issued Physician's and
23 Surgeon's Certificate Number A 41020 to Phung Vo Ha, M.D. (Respondent). The Physician's and
24 Surgeon's Certificate expired on November 30, 2011, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board¹), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

5. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "[B]oard" as used in the Medical Practice Act refers to the Medical Board of California. References to the "Division of Medical Quality" and "Division of Licensing" set forth in the Medical Practice Act are also referable to the Medical Board of California.

1 "(d) Incompetence.

2 "(e) The commission of any act involving dishonesty or corruption which is substantially
3 related to the qualifications, functions, or duties of a physician and surgeon.

4 "(f) Any action or conduct which would have warranted the denial of a certificate.

5 "(g) The practice of medicine from this state into another state or country without meeting
6 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
7 apply to this subdivision. This subdivision shall become operative upon the implementation of the
8 proposed registration program described in Section 2052.5.

9 "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
10 participate in an interview scheduled by the mutual agreement of the certificate holder and the
11 board. This subdivision shall only apply to a certificate holder who is the subject of an
12 investigation by the board."

13 6. Section 820 of the Code states:

14 "Whenever it appears that any person holding a license, certificate or permit under this
15 division or under any initiative act referred to in this division may be unable to practice his or her
16 profession safely because the licentiate's ability to practice is impaired due to mental illness, or
17 physical illness affecting competency, the licensing agency may order the licentiate to be
18 examined by one or more physicians and surgeons or psychologists designated by the agency.
19 The report of the examiners shall be made available to the licentiate and may be received as direct
20 evidence in proceedings conducted pursuant to Section 822."

21 7. Section 821 of the Code states:

22 "The licentiate's failure to comply with an order issued under Section 820 shall constitute
23 grounds for the suspension or revocation of the licentiate's certificate or license."

24 8. Section 824 of the Code states:

25 "The licensing agency may proceed against a licentiate under either Section 820, or 822, or
26 under both sections."

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1 9. Section 118, subdivision (b), of the Code provides that the expiration of a license
2 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
3 within which the license may be renewed, restored, reissued or reinstated.

4 **CAUSE FOR DISCIPLINE**

5 (Failure to Comply With Order Pursuant to Section 820)
6 [Bus. & Prof. Code 821]

7 10. Respondent is subject to disciplinary action under section 821 of the Code in that she
8 failed to comply with an Order to Undergo a Mental and Physical Examination under section 820
9 of the Code. The circumstances are as follows:

10 11. On or about December 8, 2010, the Medical Board received a consumer complaint
11 alleging poor hearing and possible mental impairment. The patient wrote that on December 8,
12 2010, she went to Respondent for the care and treatment of back muscle pain and possibly a
13 pinched nerve. While in the examination room, Respondent asked the patient the same
14 questions several times. For example, Respondent requested the name of the patient's previous
15 physician approximately five times. In addition to answering the question, the patient wrote the
16 physician's name down and gave it to Respondent at least three times. When the patient could
17 not remember the fax number of and zip code of her previous physician, Respondent became
18 sarcastic and rude. While the door to the examination room was wide open, Respondent lifted up
19 the patient's shirt without first informing her. When the patient asked Respondent if she knew the
20 cause of the back pain, Respondent replied that the only way the cause could be determined
21 would be by performing a blood test.

22 12. On or about May 4, 2011, a Medical Board Investigator met with Respondent and her
23 husband. Initially, they did not want to speak with the investigator. They agreed once the
24 investigator explained that the Medical Board received notice that Respondent may have some
25 hearing problems and was rude to a patient. Respondent said "No." She then turned and spoke to
26 her husband in Vietnamese. Her husband stated she was fine and there was not a problem. The
27 investigator proceeded to ask Respondent questions regarding her health status and current
28 treating physician. She noticed that Respondent was leaning closer to her and not answering all
of her questions. The investigator explained that the patient alleged that Respondent left the door

1 open while she performed the examination. Respondent denied doing so and said she uses a
2 chaperone for pelvic examinations. When the investigator explained that it was not a pelvic
3 examination, Respondent admitted that she did not remember the patient. The investigator then
4 asked Respondent if she would be willing to submit to a physical evaluation. Respondent
5 refused.

6 13. On or about May 13, 2011, the investigator spoke to Respondent's treating physician.
7 The doctor explained that he saw Respondent two or three times per year to manage her blood
8 pressure and cholesterol. He said he had not had her hearing testing nor had he ever performed a
9 neurological examination.

10 14. The investigative file was reviewed by a Medical Board expert who opined: "It is
11 clear that Dr. Ha exhibits possible impediments to the effective practice of medicine as it is
12 presented in this case." In addition to cultural and language impediments, the expert found a
13 hearing impediment which could "have a direct effect on communication" and also a mental
14 impediment. He concluded that "Dr. Ha should undergo a comprehensive evaluation by her
15 primary care physician with consultation with audiology and neurology as seen fit" in order "to
16 safeguard and ensure the safety of the People of California as patients."

17 15. On March 8, 2012, A Petition to Compel Mental and Physical Evaluations was filed
18 by Complainant.

19 16. On March 16, 2012, the Board found there was reasonable cause to believe that
20 Respondent was unable to practice medicine with reasonable skill and safety to patients within
21 the meaning of section 820 and consequently ordered that Respondent undergo a mental and
22 physical evaluation. The Order also stated that the examination of Respondent shall be conducted
23 at a time mutually convenient to Respondent and the examiner(s) selected by the Board, but not
24 later than thirty (30) days from the date of service of the Order.

25 17. On March 16, 2012, an Associate Analyst from the Discipline Coordination Unit of
26 the Medical Board wrote a letter to Respondent, including a copy of the Order Compelling
27 Mental and Physical Evaluations, advising that the examinations shall be conducted no later than
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1 thirty (30) days from the date of service of the Order. The letter, with a copy of the Order
2 attached thereto, was served on Respondent by certified mail on March 16, 2012.

3 18. To this date, Respondent has failed to submit to a mental or physical evaluation by
4 physicians designated by the Board or its designee. She has therefore failed to comply with an
5 order within the meaning of section 821 of the Code.

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board issue a decision:

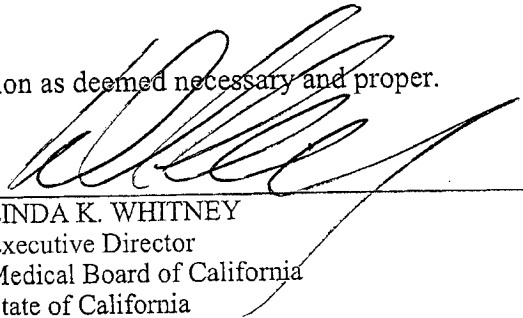
9 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 41020,
10 issued to Phung Vo Ha, M.D.

11 2. Revoking, suspending or denying approval of Phung Vo Ha, M.D.'s authority to
12 supervise physician's assistants, pursuant to section 3527 of the Code;

13 3. Ordering Phung Vo Ha, M.D., if placed on probation, the costs of probation
14 monitoring; and

15 4. Taking such other and further action as deemed necessary and proper.

16 DATED: January 15, 2013


17 LINDA K. WHITNEY
18 Executive Director
19 Medical Board of California
20 State of California
21 Complainant

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